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14 CITY OF SAN BERNARDINO

15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA

17 CHRISTINA N.,

18 Plaintiff,

19 v.

20 CITY OF SAN BERNARDINO, et al.,

21 Defendants.

Case No. 5:24-cv-01593-KK-AGR

Assigned to Hon. Kenly Kiya Kato

**DECLARATION OF JAMES P. SCHRATZ
IN SUPPORT OF DEFENDANT CITY OF
SAN BERNARDINO'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES IN THE AMOUNT
OF \$937,293.75**

Hearing Date: July 2, 2026

Time: 9:30 a.m.

Courtroom: 3

Location: 3470 Twelfth St.

Riverside, CA 92501-3801

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1 audits, I have found that well-run litigation typically requires no more than four percent of time to
2 be devoted to intra-office conferencing. Some conferencing is necessary. Excessive conferencing
3 simply inflates the fees and should be adjusted.

4 Fifth, the attorneys billed for clerical and administrative work. While such work may be
5 necessary, it should be considered part of the overhead and taken into consideration when setting
6 rates. This time needs to be adjusted.

7 Sixth, I found that Mr. Brock used a vague, generic description of his trial preparation,
8 billing eight such entries, all for precisely 5.0 hours. multiple instances of one plaintiff's attorney
9 billing to review correspondence between another plaintiff's attorney and someone else, or
10 multiple attorneys billing to review the same court document. These entries did not provide any
11 meaningful information for review. This time needs to be adjusted.

12 Seventh, as noted above, one attorney, Ms. Kerner, billed 24.5 hours and 21.6 hours on
13 separate days. The 24.5 hours was impossible. The 21.6 hours was improbable. Her time needs to
14 be adjusted.

15 Eighth, the requested 1.25 multiplier is not warranted based upon the analysis below.

16 My recommendation is that Plaintiff's attorneys be awarded no more than \$531,468.76 in
17 fees with no multiplier.

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1 but also rates charged by solo practitioners and small, medium, and large law firms throughout
2 the United States.

3 4. In July 1990, I was promoted to Vice President Major Claims, where my duties
4 were expanded to include responsibility for any case throughout the world that had potential
5 exposure of \$3 million or more, and responsibility for supervising approximately 100 adjusters.
6 Again, I continued my involvement in supervising cases throughout the United States and stayed
7 abreast of what solo practitioners and small, medium, and large law firms charged their respective
8 clients.

9 5. On January 1, 1994, I left Fireman's Fund to establish my own litigation
10 management and consulting firm. I am the principal of Jim Schratz and Associates, a firm that
11 conducts legal fee audits of various law firms throughout the country. Over the past thirty-two
12 years, I have personally supervised or conducted approximately 4,000 legal fee audits throughout
13 the country on behalf of both clients and law firms, including governmental agencies, insurance
14 companies, corporations, and private individuals.

15 6. Many of these audits have involved plaintiff's fee requests in fee-shifting cases.
16 In that role, I have performed legal fee audits of various law firms on behalf of the California
17 Department of Justice, the City and County of San Francisco, the City of Huntington Beach, the
18 Sonoma County Sheriff's Office, the State of Wisconsin, United Airlines, and Avis Rent-A-Car,
19 among others. The amount of the fee requests audited ranges from a low of a few hundred
20 thousand dollars to approximately \$60 million.

21 7. A description of several of the cases in which I have provided expert opinions
22 and/or testimony is attached as **Exhibit 1**.

23 8. I know of no expert whose opinion is wholly accepted by courts 100 percent of the
24 time. Like most other experts, not all courts have accepted my audit findings. Over the years we
25 have attempted to track all cases that have rejected, in whole or in part, my opinions and it
26 appears that out of approximately 4,000 audits only a few cases have done so.

27 9. My analysis of those cases in which the courts have not accepted my audit findings
28 or have criticized aspects of my methodology or credentials is attached as **Exhibit 2**.

1 10. If the plaintiff in this case or anybody else has other cases to add to this list we are
2 more than willing to do so. It is my firm belief that all experts should be fully transparent and
3 inform both the court and all parties involved of all cases which did not accept their opinions.
4 More specifically, I believe all the declarants in a case should provide any and all information
5 concerning any declarations they have filed in the past where the courts have rejected, in whole or
6 in part, their statements. I believe we all owe that to the court and to the opposing party.

7 **ADDITIONAL NOTES RE: AUDITS IN GENERAL**

8 11. An audit does not always uncover overbilling. On numerous occasions, I have
9 been retained by a client to audit a legal bill and have informed the client that there is little, if any,
10 overbilling and that the client should pay most, if not all, of the invoice.

11 12. For example, previously I have been retained by the California Department of
12 Insurance to audit a number of law firms in connection with numerous matters, including the
13 insolvency of Golden Eagle Insurance Company, which was located in San Diego, California
14 (and was declared insolvent by the California Insurance Commissioner). On a number of these
15 audits, I found that most, if not all, of the fees involved were reasonable and necessary, and
16 recommended to the client that it pay most, if not all, of the fees audited.

17 13. As a standard practice, I make an offer to all of my clients to review the bills free
18 of charge and arrive at a preliminary opinion as to whether an audit would uncover any
19 overbilling, so as to make an audit cost efficient. I estimate that in approximately 10 to 15 percent
20 of the requests I receive, I suggest to the client that an audit is not cost justified.

21 14. On numerous occasions, I have been retained by a law firm engaged in litigation
22 with a client to conduct an audit, and if the audit discloses no overbilling, I testify as an expert
23 witness on behalf of the law firm. The following is a partial list of the law firms that I have
24 audited where the audit disclosed that most, if not all of the fees, were reasonable.

25 Sidley & Austin
26 Manatt, Phelps & Phillips
27 Mower, Koeller, Nebeker, Carlson & Halluck
28 Lanahan & Reilley
 Lurie & Zepeda
 Banning, Micklow, Bull & Lopez
 Robles & Castles

1 Thelen Reid & Priest
2 Stoel Rives
3 Robinson & Cole
4 LeBoeuf, Lamb, Greene & MacRae
5 Husch & Eppenberger
6 Parson, Behle & Latimer
7 Christiensen Miller Fink Jacobs Glaser Weil & Shapiro, LLP
8 Berding & Weil
9 Meredith Weinstein & Numbers
10 Spector Law Offices
11 Epstein Becker and Green
12 Pillsbury Winthrop
13 Latham and Watkins

14 15. The following is a sampling of cases where I have provided deposition and/or trial
15 testimony in support of a law firm's fee request. It is important to emphasize that we use the same
16 legal fee audit methodology whether we are retained by a law firm in support of its fee request or
17 retained by an opposing party in opposition to the fee request. The purpose of the audit is to give
18 an honest, unbiased opinion on the reasonableness of the legal fees.

- 19 • In *PNY Technologies, Inc. v. Miller, Kaplan, Arase & Co., LLP*, Case No. 3:15-cv-
20 01728-MMC, in the United States District Court, Northern District of California,
21 I testified in support of the national law firm Winston & Strawn's request for fees.
- 22 • In *Gen. Charles E. Yeager, Victoria Yeager, Charles E. Yeager Revocable Living*
23 *Trust, and General Chuck Yeager Foundation v. Don A. Lesser, The Lesser Law*
24 *Group, and Does 1 through 20, inclusive*, Case No. 34-2011-00109638, in the
25 Superior Court of California, County of Sacramento, I testified in support of the law
26 firm's request for fees.
- 27 • In *North Coast Engineering, Inc. v. State Farm General Insurance Company, et*
28 *al.*, Case No. SCV 243762, in the Superior Court of California, County of Sonoma,
I testified in support of a request for fees submitted by the Law Offices of Duncan
James.
- In *Victaulic Company v. American Home Assurance Company, et al.*, Case
No. RG12642929, in the Superior Court of California, County of Alameda, I testified
in support of Pillsbury Winthrop's request for fees.
- In *Sonic Automotive, Inc., v. Chrysler Insurance Company, et al.*, Case No.
1:10CV717, in the United States District Court for the Southern District of Ohio –
Western Division, we were retained to audit fees and expenses for over \$10 million
submitted by the law firms of Hinshaw & Culbertson LLP, Broad & Cassel, James
McElroy & Diehl, P.A., and Williams & Connolly LLP. We performed a legal fee
audit according to our standard audit methodology.

- 1 • In *EDUCAP, Inc. et al., v. Philadelphia Indemnity Insurance Company*, Civil Action
2 No. 1:13-cv-72 LO/IDD, in the United States District Court for the Eastern District of
3 Virginia – Alexandria Division, we were retained to audit \$3.9 million in fees for the
4 law firms of Williams & Connolly LLP, Simpson Thacher & Bartlett LLP, Skadden,
Arps, Alte, Meagher & Flom LLP, and Jaffe Raitt Heuer & Weiss PC. We performed
a legal fee audit according to our standard audit methodology.

5 16. I have published approximately 35 articles, many of which involve the control of
6 legal fees and abuses in the billing practices of attorneys. Over the past several years, I have given
7 numerous presentations on legal auditing and controlling legal costs throughout the United States,
8 Canada, and England. I have made a number of presentations to various Bar Associations,
9 insurance industry groups, and other organizations, including the American Bar Association, on
10 how to assist the court in analyzing fee requests. I wrote an article on employing legal fee
11 auditors in fee-shifting cases, which was published in *Trial Diplomacy Journal*. I also wrote an
12 article, “How to Win a Fee Petition,” which was published in a number of publications including
13 *The Rhode Island Bar Journal*, *The Practical Litigator*, *The Federal Lawyer* and *Business Laws*,
14 *Inc.’s Law Department Management Adviser*. Among other points, this article listed various “red
15 flags” or questionable billing practices that should be avoided in submitting a fee application.

16 17. Attached hereto as **Exhibit 3** is a true and correct copy of my Curriculum Vitae,
17 which lists my work history, my publications, and my general experience.

18 SCOPE OF REVIEW

19 18. On or around May 10, 2026, I was retained by the City of San Bernardino through
20 attorney Jennifer K. Berneking of Atkinson, Andelson, Loya, Ruud & Romo to review the
21 Motion for Attorney’s Fees that was anticipated to be filed by Plaintiff’s attorneys and to provide
22 an opinion as to the reasonableness and necessity of the requested fees. That motion was filed on
23 May 13, 2026 by attorneys Robert R. Clayton of Brock & Gonzales LLP (“BG”) and Louanne
24 Masry of the Masry Law Firm, A.P.C. (MLF). BG and MLF represented plaintiff in this matter.

- 25 19. As part of this audit, I reviewed the following documents related to the fee motion:
- 26 • PLAINTIFF’S NOTICE OF MOTION (“Notice”) AND
 - 27 MOTION FOR ATTORNEY’S FEES IN THE AMOUNT OF \$937,293.75 (“MPA”);
 - 28 DECLARATION OF ROBERT R. CLAYTON (“Clayton Declaration” or “Clayton

1 Decl.”) and Exhibit 1;

2 DECLARATION OF D. AARON BROCK (“Brock Declaration” or “Brock Decl.”)
and Exhibit 2;

3 DECLARATION OF LOUANNE MASRY (“Masry Declaration” or “Masry Decl.”)
4 and Exhibit 3;

5 DECLARATION OF CHRISTINA R. KERNER (“Kerner Declaration” or “Kerner
6 Decl.”) and Exhibit 4; AND

7 DECLARATION OF ANDREW PLETCHER (“Pletcher Declaration” or “Pletcher
8 Decl.”) and Exhibit 5 (ECF Document 123)

- 9 • [PROPOSED] ORDER RE: PLAINTIFF’S MOTION AND MOTION FOR
10 ATTORNEY’S FEES (ECF Document 123-1)

11 20. Collectively, these documents are referred to as “Plaintiff’s Motion” or “Fee
12 Motion.” In addition, I reviewed all available deposition and trial transcripts as well as multiple
13 pleadings as set forth in **Exhibit 4** and conferred with defense counsel regarding this case. In
14 total, I read or reviewed at least 45 documents totaling 4,229 pages of case documents.

15 21. I am not being compensated based upon my “success” at reducing the requested
16 fees.

17 **AUDIT METHODOLOGY**

18 22. As part of the audit process the billing time records were input into a computer
19 database to allow for comprehensive searching and analysis. The computerized database
20 permitted creation of summary reports of billing by categories of activities. To the best of my
21 information and belief, these reports accurately reflect the information contained in the submitted
22 billing records. Having the records in the computer database also allowed for accurate
23 quantification of various other issues including, but not limited to, those discussed in this
24 declaration. My staff and I analyzed each of the 849 billing entries for necessity and
25 reasonableness.

26 **SCOPE OF AUDIT**

27 23. The starting point in any audit is to determine the lodestar, or the amount being
28 requested. Plaintiff’s Notice states that they are requesting fees of \$749,835 with a 1.25

1 multiplier, for total fees of \$937,293.75. (Notice, p. 2:6-9; see also MPA, pp. 8:19; 14:13; 20:22-
2 23.)

3 24. The auditor's independent calculation of the billing records submitted with the Fee
4 Motion (Exhibits 1-5) confirmed the amount of requested fees is \$749,835, pre-multiplier.

5 25. However, the auditor identified one error on the summary table contained on
6 page 14 of the Fee Motion. The table states that Ms. Christina Kerner's hours total 252. (MPA,
7 p. 14:10.) Plaintiff's Exhibit 4 states that her total hours are 298.9 and that is what the auditor's
8 independent calculation confirmed to be the correct total. This error does not affect the amount of
9 fees being requested by Plaintiff's attorneys.

10 STANDARD OF REVIEW

11 26. Based on my experience as an attorney, client, and legal fee expert, it is my
12 opinion that billing standards have changed over the past 30 years. In the past, many courts and
13 clients were not sensitive to the numerous potential problems caused by block billing, vague
14 entries, or excessive minimum billing increments. However, as academics such as William G.
15 Ross, the Albert P. Brewer Professor of Law and Ethics in Samford University's Cumberland
16 School of Law in Birmingham, Alabama and author of The Honest Hour, published in 1996,
17 began to study both the prevalence of such billing practices and their potentially harmful effects,
18 both courts and clients began to pay close attention. In response, the profession of legal fee
19 auditing developed to aid clients and the courts in quantifying those potentially harmful effects.
20 Courts began to look at these expert reports and then developed an increasing body of case law
21 that the legal fee experts used as part of their methodology.

22 27. As law firm fees began to be reduced because they were employing these
23 questionable billing practices, law firms began establishing their own internal billing guidelines
24 requiring timekeepers to refrain from such practices. I have personally put on presentations to
25 such law firms. In addition, many law firms instituted Quality Control procedures to assure
26 themselves that such questionable billing practices would not be permitted within the law firm.
27 These Quality Control procedures developed because the law firms realized that certain
28 questionable billing practices such as block billing, vague entries, excessive minimum billing

1 increments, and excessive intra-firm conferencing were within the control of the law firm and to
2 the degree they could be controlled or eliminated the law firm increased its chances of recovering
3 its fees. Many of the more sophisticated law firms even issued their own internal billing
4 guidelines prohibiting such practices.

5 28. In conducting a legal fee audit, I analyze the invoices and work product generated
6 in light of one of two standards. The first standard is contained in any retainer agreement between
7 the law firm and client, or in billing guidelines or any other instructions provided by the client to
8 the law firm. In addition to looking at such agreement, guidelines, or instructions, I look to
9 established case law for what are acceptable billing practices as the second standard. To the
10 extent there are instructions from the client, State Bar opinions and case law may supplement or
11 even override the instructions. **The case law referenced in this report is not being cited for its**
12 **legal authority, but to establish that there is a foundation for the opinions stated herein.** In
13 that way the cases may be analogized to Generally Accepted Accounting Principles, commonly
14 known as GAAP, which are a collection of commonly followed accounting rules and standards
15 for financial reporting. I am not aware of any billing guidelines that may be in place in this
16 matter.

17 29. This case was taken on contingency. (MPA, p. 7:2-3; Brock Decl., ¶ 4 at p. 25:25-
18 28; ¶ 8 at p. 27:5.) In a fee-shifting case such as this, if a jury or court found that the defense
19 prevailed, plaintiff would not be entitled to any attorneys' fees whatsoever. On the other hand, if a
20 jury or court found that plaintiff prevailed on the merits of a fee-shifting claim, then she would be
21 entitled to seek to recover her reasonable and necessary attorneys' fees and costs related to those
22 fee-shifting claims from the defendant(s) against whom she prevailed.

23 30. In the auditor's experience a significant issue related to attorneys' fees in
24 contingency fee matters is that there are no billing guidelines and the firm's billing is not
25 contemporaneously, regularly, or ever reviewed by the client. Even if the client is given one or
26 more opportunities to review the billing, as the client knows they are not responsible for paying
27 any of the amounts, the review is, most likely, cursory and uncritical. The lack of any external
28 oversight can lead to lax internal oversight of billing practices, particularly where billing overages

1 accrue to the benefit of the ones who are billing. This lack of this extra, external incentive to
2 control fees is especially troublesome in light of the magnitude of the fees requested in this case.

3 31. The auditor approaches all legal fee audits with the assumption that most attorneys
4 do not intentionally inflate their bills. However, where it is difficult to determine the nature and
5 extent of the possible overbilling due to the firms' questionable billing practices, such as block
6 billing or vague entries, it is incumbent upon the law firms, as the moving party, to justify their
7 fees.

8 BILLING RECORDS

9 32. The auditor views a law firm's billing records as a representation by the law firm
10 that a particular task was performed on a particular day, by a particular timekeeper, and that the
11 timekeeper spent the amount of time stated on the invoice. Billing format or billing practice
12 irregularities that bring into question the credibility, integrity or reliability of a law firm's billing
13 records are not only unacceptable, they are potentially grounds for a significant disallowance of
14 fees.

15 33. None of the attorneys state that all of their submitted hours were recorded
16 contemporaneously.

- 17 • **Attorney Clayton.** "Exhibit 1 filed herewith reflects 252 hours that I spent litigating
18 this case. Some of the times listed are based upon contemporaneous records and some
19 are good faith estimates based upon my personal experience completing these tasks, as
20 to the amount of time spent on them." (Clayton Decl., ¶ 8 at pp. 23:27-24:2.)
- 21 • **Attorney Brock.** "Exhibit 2 filed herewith reflects 122.8 hours that I spent litigating
22 this case. Some of the times listed are based upon contemporaneous records and most
23 are good faith estimates based upon my personal experience completing these tasks, as
24 to the amount of time spent on them." (Brock Decl., ¶ 14 at p. 29:2-5.)
- 25 • **Attorney Masry.** "Exhibit 3 filed herewith reflects 44.25 hours that I spent litigating
26 this case. Some of the times listed are based upon contemporaneous records and some
27 are good faith estimates based upon my personal experience completing these tasks, as
28 to the amount of time spent on them." (Masry Decl., ¶ 7 at p. 31:25-28.)
- **Attorney Pletcher.** "Exhibit 5 filed herewith reflects 182 hours that I spent litigating
this case. Some of the times listed are based upon contemporaneous records and some
are good faith estimates based upon my personal experience completing these tasks, as
to the amount of time spent on them." (Pletcher Decl., ¶ 10 at p. 41:23-26.)

34. From these attorneys' statements, it is impossible to know how many of their
entries were made contemporaneously and how many are reconstructed "good faith estimates."

1 None of the attorneys provide any hints as to how many entries were contemporaneously made
2 and how many are simply “estimates” or even what percentage of their entries fall into each
3 category. There is also no identification in the exhibits which entries are contemporaneous
4 records and which constitute “estimates.”

5 35. To the extent that reconstructed records (i.e., non-contemporaneously-recorded
6 time entries) are submitted, a judge is not required to evaluate “reconstructed” time with the same
7 credibility and presumption of accuracy as contemporaneously-recorded time. (*Horsford v. Board*
8 *of Trustees of California State University*, F051782 (Cal. App. 9/4/2008), fn 2 [“This is not to say
9 that contemporaneous time records are required as part of every attorney fee application; they are
10 not]; (see *Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 270-272.) Still,
11 the trial court is entitled to evaluate the records that are submitted and is not required to treat all
12 records as equally informative or accurate. (See, e.g., *PLCM Group, Inc. v. Drexler, supra*, 22
13 Cal.4th at p. 1096, fn. 4.)” A true and correct copy of the *Horsford* opinion is attached hereto as
14 **Exhibit 5.**

15 36. The burden of proof is initially on the party seeking the fees to justify their fee
16 request and to that extent, they have failed to show that the time records were made
17 contemporaneously.

18 37. The remaining attorney, Ms. Kerner, makes no statement whatsoever as to how her
19 billing entries were recorded or maintained. She states: “My firm has billing records for all
20 attorney time devoted to the matters it handles. I have personally reviewed my own time entries
21 on this matter from the date of my first involvement through the date of this declaration, and I
22 have exercised billing judgment to remove any entries that I considered duplicative, unnecessary,
23 or excessive.” (Kerner Decl., ¶ 13.)

24 38. Her claim that she reviewed her own time entries (she submitted 227 billing
25 entries) and exercised billing judgment to remove certain entries is troublesome in light of her
26 entries for two particular days.

1 39. Attorney Kerner submitted two billing entries for September 6, 2025:

2

3 2025-09-06	Kerner, Christina	Reviewed and gathered evidence for Plaintiff's Opposition to Defendant's MSJ	8.00
4 2025-09-06	Kerner, Christina	Drafted Plaintiff's Separate Statement for Plaintiff's Opposition to Defendant's MSJ	16.50

5

6 40. These entries total 24.50 hours, an obvious impossibility to be billed within a
7 single day.

8 41. She submitted four billing entries for October 22, 2025:

9

10 2025-10-22	Kerner, Christina	Listened to Hours of Transcript [sic] Interviews	12.00
11 2025-10-22	Kerner, Christina	Review and Draft Joint Statement re ADR	1.50
12 2025-10-22	Kerner, Christina	Drafted Plaintiff's Memo of Facts & Contentions	8.00
13 2025-10-22	Kerner, Christina	Internal chain email re OSC declaration	0.10

14

15 42. These entries total 21.60 hours, which, while technically not impossible, is highly
16 improbable given the need for nutrition, hydration, personal hygiene, and the inefficiencies that
17 inevitably occur as one works such long hours. Based on my experience as an attorney and legal
18 fee expert, it has been my opinion that in order to bill 10 hours a day in the office an attorney
19 must spend at least an additional two or three hours in the office in order to account for bathroom
20 breaks, personal business, etc. In order to bill 20 hours a day, more than two or three hours would
21 be necessary to account for these issues.

22 43. In *Alvarado v. FedEx*, 2011 U.S. Dist. LEXIS 112997 (September 30, 2011), the
23 Special Master recommended a conservative 20% across-the-board reduction to account for
24 "pervasive inflation" in moving party's fee petition including a number of large block-billed days
25 and repeatedly billing for excessively long days. A copy of this case is attached as **Exhibit 6**.
26 *Alvarado, supra*, 2011 U.S. Dist. LEXIS 112997, *58. The court instead imposed a 40% across-
27 the-board reduction to account for such excesses. *Alvarado, supra*, 2011 U.S. Dist. LEXIS
28

1 112997, *60. See also *Strachan v. Pandaw Cruises India Pvt, Ltd* (D. Colo 2013) No. 10-cv-
2 02593 (affirmed on appeal April 14, 2014, No. 13-1482); *Chrapliwy v. Uniroyal*, 583 F. Supp.
3 40, 49-50 (1983); *Ramos v. Lamm*, 713 F 2d 546, 553.

4 44. Although none of the other attorneys' billing records show such a billing practice,
5 it still calls into question the accuracy, whether or not intentional, of their billing records.

6 45. Another example of poor "estimating" are the following entries:

7

8 2024-12-06	Pletcher, Andrew	Attend the Rule 26(f) conference with CK	0.50
9 2024-12-12	Kerner, Christina	Conduct Rule 26f Conf M&C with OC and Pletcher & Reviewed OC's Confirming email	1.00

10

11 46. Mr. Pletcher says the Rule 26(f) conference happened on December 6, 2024.
12 Ms. Kerner states the conference happened six days later, on December 12, 2024.

13 47. The burden of proof is initially on the party seeking the fees to justify their fee
14 request and to that extent they have failed to show that the time records were made
15 contemporaneously and that it shows work actually done.

16 48. Other than this issue, the timekeepers' records show the name of the timekeeper,
17 their title (partner/senior associate/of counsel), the date of the billing entry, the hours billed in
18 tenth-of-an-hour increments, a column identifying whether the entry was billable (all of the
19 entries were marked "billable), and a narrative description of the task or tasks billed. Each exhibit
20 also identified the timekeeper's requested hourly rate, the total billable hours, and the total
21 billable amount.

22 FINDINGS AND OPINIONS

23 I. THE REQUESTED BILLING RATES ARE 24 UNSUPPORTED AND UNJUSTIFIED.

25 49. I regularly have access to current law firm rates in conducting legal fee audits and
26 auditing law firms' billing invoices. I also regularly review court opinions on attorneys' fee
27 motions and requests and I am familiar with what law firms practicing in San Bernardino County
28 Superior Court and the United States District Court for the Central District of California, Eastern

1 Division are seeking as hourly rates and what courts are awarding. Based on my experience in
2 having conducted approximately 4,000 legal fee audits, my experience as an attorney and expert
3 in legal fees over the past 46 years, and my review of the above-mentioned material, I have
4 personal knowledge of hourly billing rates for attorneys and staff in the San Bernardino County
5 Superior Court and the United States District Court for the Central District of California, Eastern
6 Division market areas. On that basis, it is my opinion that the billing rates being claimed in
7 Plaintiff's Motion are unreasonable for the reasons set forth below and that the requested rates
8 should be adjusted. Furthermore, seeking these rates and then asking for a 1.25 multiplier on top
9 of these rates is even more excessive.

10 **A. Not Usual and Customary Rates That Are**
11 **Paid by Clients or Awarded by Courts.**

12 50. Plaintiff's attorneys state that they have extensive experience over many years in
13 the area of law involved in this matter. Despite this, they have cited to no prior fee awards in any
14 case, save one.

15 51. **Robert R. Clayton.** According to the motion, "Robert R. Clayton has "substantial
16 experience litigating sexual abuse matters against government entities." (MPA, pp. 8:1-2, 12:6-8)

17 52. Mr. Clayton states:

18 Since 2005, I have exclusively represented plaintiffs in cases involving catastrophic
19 personal injury, sexual abuse, and civil rights violations. I have successfully litigated,
20 through trial or settlement, thousands of cases on behalf of my injured clients with
hundreds of seven and eight figure results. To date, **I have tried more than three**
dozen cases, and I have been the lead trial counsel on multiple cases.

21 (Clayton Decl., ¶ 3 at p. 22:23-28 (emphases added).)

22 53. Mr. Clayton states that his "reasonable rate is \$1,000/hour, based upon my nearly
23 27 years of experience as a trial attorney, my results obtained in jury trials, and my expertise in
24 this type of case." (Clayton Decl., ¶ 7 at p. 23:20-22.) However, he has not provided the result of
25 a single jury trial that he has won over his 27 years of experience or any fee awards that he has
26 received in his nearly three decades of law practice.

27 54. Mr. Clayton also states that his "rate is consistent with, or below, those charged by
28 attorneys of comparable skill, reputation, and experience handling complex plaintiff-side

1 employment and civil rights litigation in California.” (Clayton Decl., ¶ 7 at p. 23:22-24.)

2 However, he has not provided the rate of even a single attorney, let alone a comparable attorney,
3 to lay a foundation for this statement.

4 55. **D. Aaron Brock.** Mr. Brock states:

5 Brock & Gonzales, LLP [...] has grown from a two-attorney firm to more than 20
6 attorneys and has substantial experience litigating cases against public entities.

7 (Brock Decl., ¶ 4 at p. 25:22-24.)

8 Brock & Gonzales, LLP has focused almost exclusively on the prosecution of plaintiff-
9 side employment, civil rights, sexual abuse, class action, and serious personal injury
10 matters. All matters handled by the firm involve contingency litigation against corporate
11 and public entity defendants.

12 (Brock Decl., ¶ 4 at p. 25:25-28)

13 I have represented thousands of individuals in a wide variety of employment, civil rights,
14 sexual abuse, class action, and serious personal injury matters. **I have acted as lead trial
15 counsel in numerous jury trials in both state and federal court, including cases tried
16 through verdict.**

17 (Brock Decl., ¶ 5 at p. 26:6-9 (emphasis added).)

18 56. Despite his claimed “substantial experience” and involvement in “numerous jury
19 trials ... including cases tried through verdict”, Mr. Brock only cites to a single case from 2017 in
20 which he was awarded fees. He states that his hourly rate of \$600 was approved in 2017. (Brock
21 Decl., ¶ 13 at p. 28:22-26.)

22 57. There are several points related to the order in this prior case. First, the fee order
23 indicates that while the defendants in that case opposed the fee motion, they did not oppose the
24 hourly rates requested. A copy of the fee order in *Matkovich v. Costco Wholesale Corporation, et*
25 *al.* (C.D. Cal. Aug. 24, 2017), Case No. LA CV 15-2057 JCG is attached as **Exhibit 7**. (See *4.)
26 Second, while the fee order states that “each of the requested rates is reasonable,” Mr. Brock’s
27 rate is never separately discussed by the court as it did for the other attorneys. Third, it should be
28 noted that the fee order awarded Mr. Pletcher fees at \$350 per hour.

58. Mr. Brock states that his “reasonable hourly rate is \$1,000/hour.” (Brock Decl.,
¶ 12 at p. 28:15.) This would be a 67 percent increase from his prior \$600 per hour award in 2017

1 ((\$1,000-\$600/\$600 = 0.67), or an annual increase of approximately 6 percent. However, attorney
2 billing rates, and inflation in general, have not averaged six percent per year for the past 10 years.

3 59. The 2022 LexisNexis CounselLink® Report found that hourly rates increased by
4 3.4 to 3.5 percent per year from 2020 through 2022:

5 Consistent with what we observed in 2020, despite pandemic-related and other pressures
6 for legal departments to reduce outside counsel spending, hourly rate increases paid to US
7 firms showed no signs of slowing. On average, 2021 partner hourly rates increased by
3.4% relative to 2020. This compares to 3.5% growth in 2020 versus 2019.

8 A copy of the relevant pages of the 2022 CounselLinkReport is attached as **Exhibit 8**.

9 60. Other analyses have found that law firm rate increases averaged slightly higher, at
10 four percent per year. 2023 and 2024 saw slightly higher average rate increases.¹

11 61. Therefore, seeking a six percent annual increase for 10 years running is not
12 supported by the evidence and Mr. Brock’s \$600 per hour award in 2017 does not justify his
13 requested \$1,000 per hour in this Fee Motion.

14 62. **Louanne Masry**. Ms. Masry states that she is a highly experienced litigator:

15 I have substantial experience in litigating sexual abuse cases throughout California,
16 especially against public entities. I estimate that I have taken and defended more than 500
depositions and have prepared and argued hundreds of motions in this subject area.

17 (Masry Decl., ¶ 3 at p. 30:19-22.)

18 63. She also states that she has “obtained several large and noteworthy settlements and
19 **I have participated in approximately 25 jury trials, many of which resulted in seven or**
20 **eight-figure verdicts.”** (Masry Decl., ¶ 4 at p. 30:23-25 (emphasis added).) However, she has not
21 provided a citation or reference to a single such successful case or to any fee award that she has
22 received in her nearly three decades of law practice.

23 _____
24 ¹ <<https://abovethelaw.com/2019/11/just-because-billing-rates-are-up-doesnt-mean-bonuses-will-follow/>>,
25 last visited September 19, 2021. A true and correct copy of this article is attached as **Exhibit 9**. The article refers to a
26 4 percent rate increase. See also <<https://www.law.com/americanlawyer/2018/02/21/sorry-clients-higher-law-firm-billing-rates-really-do-pay-off/>>,
27 last visited September 19, 2021. A true and correct copy of this article is attached as
28 **Exhibit 10**. The article states “Top-performing firms increased their rates at an average annual rate of 4.4 percent,
compared with an increase of 3.3 percent for the broader sample” Fee expert Richard Pearl, whose work
Plaintiff’s attorneys cite (MFA, p. 17:19ff) has also previously agreed with this general rate of increase. See
Declaration of Richard M. Pearl in Support of Plaintiff Diana Bronshteyn’s Motion for Statutory Attorneys’ Fees and
Costs in *Bronshteyn v. State of California*, Los Angeles County Superior Court Case No. 19SMCV00057 (Dec. 2,
2022), ¶ 23 at p. 16:16-24. A true and correct copy of the body of his declaration, without exhibits, is attached as
Exhibit 11.

1 64. Ms. Masry states that her “reasonable rate is \$1,000/hour, based upon my nearly
2 27 years of experience as a trial attorney, my results obtained in jury trials, and my expertise in
3 this type of case.” (Masry Decl., ¶ 6 at p. 31:18-20.) I note that this language is verbatim to that
4 found in Mr. Clayton’s declaration.

5 65. Ms. Masry also states that her “rate is consistent with, or below, those charged by
6 attorneys of comparable skill, reputation, and experience handling complex plaintiff-side
7 employment and civil rights litigation in California.” (Masry Decl., ¶ 6 at p. 31:20-22.) Again,
8 this language is lifted verbatim from Ms. Clayton’s declaration. However, as with Mr. Clayton,
9 she has not provided the rate of even a single attorney, let alone a comparable attorney, to lay a
10 foundation for this statement.

11 66. **Christina Kerner.** Ms. Kerner was admitted to the practice of law in 2017 and is
12 requesting a rate of \$650 per hour in this case. (Kerner Decl., ¶¶ 3 at p. 33:18; 10 at p. 35:8-9.)
13 She states that she requested and was awarded \$500 per hour two years ago in *Elizabeth*
14 *v. Palumbo*, a Riverside County Superior Court case. (Kerner Decl., ¶ 11 at p. 35:15-17.)
15 However, she does not identify the type of case this was, her role in the case, and whether the fee
16 request was opposed or stipulated.

17 67. She claims that “applying ordinary annual increases reflecting consumer-price
18 inflation in the Los Angeles metropolitan area a rate of \$650 in the ninth year of my practice is
19 consistent with previous rulings.” (Kerner Decl., ¶ 11 at p. 35:18-20.) A two-year increase from
20 \$500 to \$650 works out to an increase of 14 percent per year. She has not provided any evidence
21 of Los Angeles-area inflation over the past two years let alone a 14 percent per year increase.

22 68. According to the United States Bureau of Labor Statistics (BLS), as of April 2026,
23 the Consumer Price Index (CPI) in the Los Angeles area increased by 3.7 percent over 12 months.
24 A copy of the relevant BLS information is attached as **Exhibit 12**. The not-for-profit USAFacts
25 civic initiative agrees with this 3.7 percent figure. A copy of the relevant USAFacts information is
26 attached as **Exhibit 13**. According to the BLS, the CPI for the previous 12 months, i.e., from
27 .April 2024 to April 2025, for the Los Angeles area was 3.0 percent. (Ex 12.)
28

1 69. Using a generous 4 percent per year increase from 2024 to 2026 would result in
2 Ms. Kerner’s \$500 per hour award from two years ago to be \$541 per hour today, not \$650.

3 70. Ms. Kerner has not provided evidence from any other attorneys or cases as to the
4 reasonable value of her time.

5 71. **Andrew Pletcher.** Mr. Pletcher is a 2014 admittee to the State Bar. (Pletcher
6 Decl., ¶ 2 at p. 37:20.) He states that “a substantial and defining portion of my work consists of
7 substantive appellate advocacy” (Pletcher Decl., ¶ 9 at p. 41:13-14; see also MPA, p. 13:6-8.)
8 This statement may have had some probative value on his reasonable billing rate if this case had
9 involved any appellate work. It did not. Therefore, this statement does not appear to be relevant.

10 72. He states that he is requesting \$750 per hour in this case. (Pletcher Decl., ¶ 8 at
11 p. 40:25-26.) He does not cite to any cases in which he has been awarded fees.

12 73. However, as noted above, Mr. Brock cites to *Matkovich v. Costco Wholesale*
13 *Corporation* in which the court awarded Mr. Pletcher fees at \$350 per hour in 2017.

14 74. Mr. Pletcher does refer to two other recent cases in which fees were awarded. The
15 first case was *Zelaya v. City of Los Angeles* in which a 12th year attorney was awarded \$700 per
16 hour. (Pletcher Decl., ¶ 9 at p. 41:7-9.) A true and correct copy of the fee order in *Zelaya* is
17 attached as **Exhibit 14**. In June 2024, Judge Otis D. Wright, II awarded attorney Renee V.
18 Masongsong fees at that rate. (Ex. 14, *6:1-17.) In so doing, the court noted that “she was the
19 assigned senior associate and handled the ‘case’s day-to-day management.” (Ex. 14, *6:5-6.)

20 75. According to Plaintiff’s attorneys in this case, the “matter was primarily litigated
21 by D. Aaron Brock, Christina Kerner, and Louanne Masry until Robert Clayton joined Brock &
22 Gonzales in 2025. Thereafter, Mr. Clayton assumed primary responsibility for much of the day-
23 to-day litigation alongside Ms. Kerner.” (MPA, pp. 7:26-8:1.) Furthermore, the “case was
24 ultimately tried by Robert Clayton and D. Aaron Brock.” (MPA, p. 8:2-3.) Mr. Pletcher did not
25 have the same level of responsibility or involvement in this case as Ms. Masongsong did in
26 *Zelaya* and so she is not a comparable attorney for the sake of a rate comparison.

27 76. Mr. Pletcher also refers to *Augustus v. City of Los Angeles*, in 2024 a fee award of
28 \$725 per hour was given to a 10-year attorney. (Pletcher Decl., ¶ 9 at p. 41:9-11.) A true and

1 correct copy of the fee order in *Augustus* is attached as **Exhibit 15**. The only 10-year attorney
2 referenced in the fee order was Brian Olney. The court notes that the “majority of the work in this
3 case was done by Olney, who was lead counsel.” (Ex. 15, *14-15.) Further, “Olney drafted most
4 of the motions by himself.” (Ex. 15, *15.) Despite this level of work by Mr. Olney, the court
5 reduced his hourly rate from the requested \$815 to \$725. (Ex. 15, *19.) Mr. Pletcher did not do
6 the majority of the work in this case and there is no evidence that he drafted most of the motions
7 by himself. Therefore, the attempted comparison with the rate awarded to Mr. Olney fails.

8 77. Furthermore, although Mr. Pletcher cites to *Zelaya* and *Augustus* to support his
9 requested rate in this case, he immediately attempts to distinguish himself from the rates awarded
10 to these “trial-court-only civil rights practice” attorneys by highlighting that he is primarily
11 defined as an appellate attorney. (Pletcher Decl., ¶ 9 at p. 41:11-15.) However, as I have noted
12 above, no appellate work was involved in this case. As other courts have noted, “A Michelangelo
13 should not charge Sistine Chapel rates for painting a farmer’s barn.” (See *Ursic v. Bethlehem*
14 *Mines*, 719 F.2d 670, 677 (3d Cir. 1983). Appellate rates should not be awarded for non-appellate
15 work.

16 **B. There are No Declarations from Other Attorneys.**

17 78. Plaintiff’s attorneys typically submit declarations from other counsel in support of
18 a fee request. In this case, they have not done so.²

22 ² It should be noted that courts have indicated that such declarations are of limited use anyway. “Courts in
23 the Ninth Circuit have questioned the value of attorney declarations purporting to be evidence of a reasonable rate
24 because these declarations “are both self-serving and self-perpetuating.” *Kochenderfer v. Reliance Standard Life Ins.*
25 *Co.*, No. 06-CV-620 JLS (NLS), 2010 WL 1912867, *4 (S.D. Cal. Apr. 21, 2010); see also *Zeigler v. Cnty. of San*
26 *Luis Obispo*, No. CV 17-9295-MWF (AFMx), 2023 WL 3432238, *4 (C.D. Cal. Mar. 1, 2023) (“The Court does not
27 assign much weight to Plaintiff’s attorneys’ declaration given its self-serving nature.”). This is particularly true
28 where, as here, the declarant works in the same substantive area of law as the fee-seeking attorney. “A high award in
this case would support the declarants’ own high hourly rate requests in the future.” *Kochenderfer*, 2010 WL
1912867 at *4.” (*James v. Cheney*, No. 2:21-CV-08256-DSF-DTB (C.D. Cal. Aug. 5, 2024) *3, fn. 3.) A true and
correct copy of the order in *James v. Cheney* is attached as **Exhibit 16**. See also *Sam K. v. State of Haw. Dep’t of*
Educ., 788 F.3d 1033, 1041 (9th Cir. 2015) (“That other attorneys may think that a given rate is ‘reasonable’ does not
necessarily say what the prevailing market rates actually are. That is especially true when the opinion[s] are
expressed by attorneys whose own professional interests might motivate them to favor higher rates.”)

1 **C. The Rate Evidence Required.**

2 79. The fee applicant must “produce satisfactory evidence—in addition to the
3 attorney’s own affidavits—that the requested rates are in line with those prevailing in the
4 community.” (*Dang v. Cross* (9th Cir. 2005) 422 F.3d 800, 814.)

5 80. In my opinion, Plaintiff’s attorneys have not submitted evidence that would
6 support the reasonableness of the hourly rates sought.

7 **D. Small Law Firm Market Rates.**

8 81. I want to start by attempting to clearly state what I am *not* saying in my opinion in
9 this section. By saying that small law firm billing rates are usually and generally lower than large
10 law firm billing rates, I am not saying that attorneys at smaller law firms are de facto less
11 experienced or capable than attorneys at larger law firms. I am not saying that attorneys at smaller
12 law firms necessarily provide a lower quality level of service than attorneys at larger law firms. I
13 am not saying that attorneys at smaller law firms always have a worse reputation than attorneys at
14 larger law firms. I am not saying that attorneys at smaller law firms automatically deserve a lower
15 hourly rate than attorneys at larger law firms do.

16 82. What I *am* presenting is economic reality, grounded in multiple independent
17 reviews (i.e., not just by me or other legal fee experts) of multi-billions of dollars in legal billing,
18 recorded around the entire country, by attorneys practicing in a variety of areas, and unambiguous
19 reporting by media focusing on the practice of law that the larger the law firm, the more they
20 command in the way of billing rates.

21 83. I must acknowledge the Ninth Circuit’s recent opinion on this issue in *LA Int’l*
22 *Corp. v. Prestige Brand Holdings, Inc.*, 24-3776, 24-5009, 24-5227 (9th Cir. Feb 24, 2026). *LA*
23 *Int’l Corp.* was a Robinson-Patman Act case addressing anticompetitive behavior in pricing
24 commodities. The case was brought by, and won by, Gaw Poe LLP, a small law firm.

25 84. In ruling on the fee portion of the case, the District Court reduced the requested
26 rates, relying upon a recent fee award obtained by Plaintiffs’ counsel and the Real Rate Report.
27 The District Court declined “to award a rate that is far above what has previously been awarded,
28 especially given that it could create a new benchmark for Plaintiffs’ fee requests in the future.”

1 85. The District Court addressed the firm size argument by noting that it was not
2 simply firm size that was at issue, but also its reputation and actual billing practices. The court
3 noted that firm size was a proxy for these other factors. The District Court also noted that the
4 2023 Real Rate Report, which was referenced in the documents in support of and opposition to
5 the fee motion, recognized that firm size was a key factor driving rates.

6 86. The Ninth Circuit disagreed with the District Court’s ruling on the attorneys’ fee
7 issue. The Ninth Circuit held that “district courts may not reduce fee awards based on the size of
8 counsel’s firm.” However, the court did not grapple with or even refer to the over ten years’
9 worth of billions of dollars of legal billing data and analysis that has consistently shown firm size
10 plays a big factor in law firm billing rates.

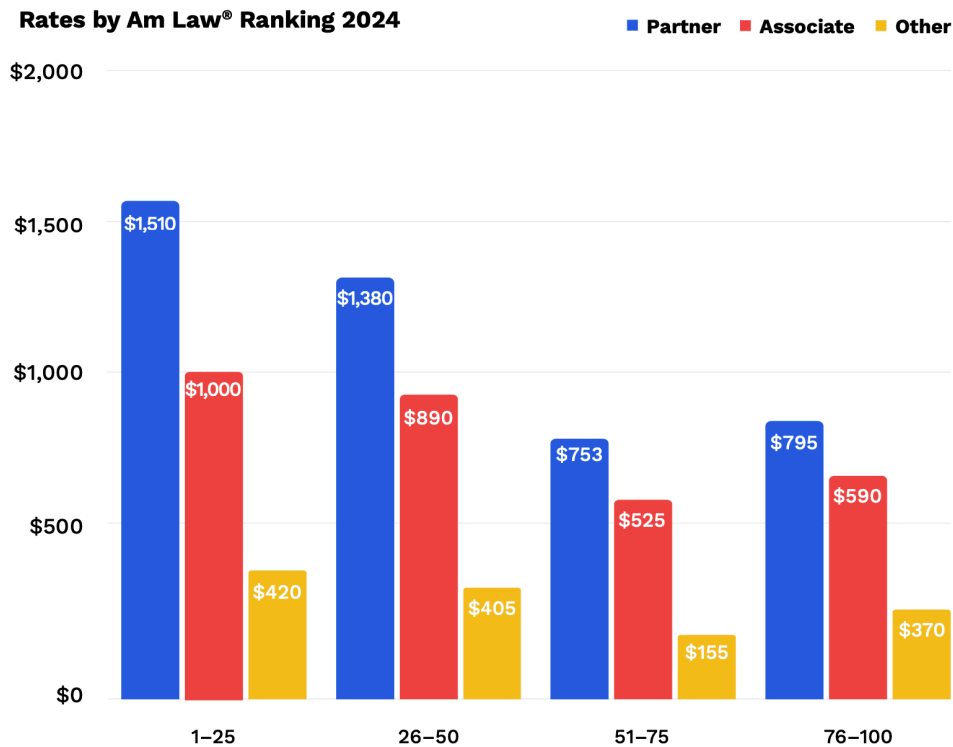
11 87. On November 4, 2025, Brightflag, a legal e-billing and matter management
12 company, reported on 2025 law firm billing rate increases. A copy of this article is attached as
13 **Exhibit 17**. They listed the three biggest factors in law firm billing rates. The factor they listed
14 first was “Firm Size.” (See Ex. 17, p. 2.) They stated:

15 The size of the firm you engage in indicates their market power and their ability to
16 command higher rates. The top 50 firms in the US, for instance, charge double the rates of
17 their peers lower down the Am Law ® 100 list. These high-grossing, large law firms
18 attract some of the best lawyers in the world, but you’re paying for both the expertise and
19 the brand.

20 88. On January 29, 2025, Brightflag reported on Wells Fargo’s Legal Specialty
21 Group’s Year-End 2024 survey. A copy of this article is attached as **Exhibit 18**. In the section on
22 Billing Rate Growth, Brightflag said: “This trend [of the largest law firms increasing their billing
23 rates more than mid and smaller law firms] indicates that top-tier firms have greater pricing
24 power, allowing them to command higher rates”

25 89. Brightflag’s Hourly Rates in Am Law 100® Firms: Increases and Key Drivers
26 reported on this same fact upon review of the Am Law 100® firms. A copy of this report is
27 attached as **Exhibit 19**.
28

1 90. Page 7 of this report graphs out the differences in billing rates between the various
2 size tiers of law firms. The difference in billing rates by firm size is readily apparent.



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16 91. The LexisNexis CounselLink 2024 Trends Report reported on insights based on
17 data derived from over \$59 billion in legal spending, billed by nearly 460,000 timekeepers,
18 involved in more than 1.6 million matters. A copy of this article is attached as **Exhibit 20**. On
19 page 20 of the report, they stated: “The size of a law firm is highly correlated to the rates billed by
20 its lawyers.”

21 92. On April 23, 2024, law.com published an article titled: “Largest Firms Continue
22 Growing Market Share, as Hourly Rates Break Records.” The author stated: “At 61%, the
23 difference in 2023 between the median partner billing rates at firms with more than 750 lawyers
24 and that of the next size tier has never been wider in the 11 years that CounselLink has publicly
25 tracked such data.”

26 93. The June 2022 Enterprise Legal Management Trends Report: Insight into 7 Key
27 Metrics was published by LexisNexis CounselLink®. Based on their analysis of \$49 billion in
28 legal spending, they found an undisputable partner hourly rate difference by law firm size:

1 This shows that the median partner rate at the largest (750+ attorneys) law firms is \$895
2 while the median partner rate at the smaller law firms (<50) is \$300.

3 A copy of this report is attached as **Exhibit 21**.

4 94. In 2020, abovethelaw.com posted an article titled: “The Bigger The Biglaw Firm,
5 The Bigger The Billing Rate.” A copy of the July 14, 2020 article is attached as **Exhibit 22**. The
6 lead line to the article stated: “According to CounselLink’s 2020 Enterprise Legal Management
7 Trends Report, the more attorneys that are employed at a firm, the more money that firm in [sic]
8 able to command in its average billing rates.” The article went on to quote Kris Satkunas, director
9 of strategic consulting at LexisNexis CounselLink and the report’s author. Ms. Satkunas is quoted
10 as saying: “I don’t think people realize how strong the correlation is between the size of the firm
11 and the rates.”

12 95. The significance of law firm size was confirmed as early as 2016 by the 2016 Real
13 Rate Report:

14 **Law Firm Size Has the Largest Impact on Hourly Rates**

15 Of the more than 350 factors we tested, our analysis confirmed that law firm size was
16 the largest driver of law firm rates. Regardless of the market location or type of work
17 performed, larger firms consistently charged higher rates. These data suggest that larger
18 law firms have been more successful not only in promoting an integrated “one-stop-
shop” value proposition but also in obtaining a greater share of large matters. Location
(especially in New York or Washington, DC), years of experience, and the designation
as a partner also heavily impacted a lawyer’s hourly rate.

19 A copy of the first several pages of the 2016 Real Rate Report is attached as **Exhibit 23** (see page
20 6, column 2). The 2024 Real Rate Report also affirms this on page 5: “Firm size -The rates can
21 increase if the firm is large and has various timekeeper roles at the firm. For example, the cost to
22 work with an associate or partner at a larger firm will be higher compared to a firm that has one to
23 two associates and a paralegal.”) (A copy of the first several pages of the 2024 Real Rate Report
24 is attached as **Exhibit 24**.)

25 96. I have provided ten years’ worth of data and reporting that supports my reporting
26 of the facts and forms the basis of my opinion on this issue. Firm size may not result in an
27 *automatic* lowering of hourly rates, but as other courts have already ruled, either as a holding or
28 *in dicta*, law firm size can affect the billing rates awarded.

1 97. In *Greene v. City of New York* (S.D.N.Y. October 25, 2013) 2013 U.S. Dist.
2 LEXIS 154342, the court noted that the size of the law firm was a significant factor in
3 determining reasonable rates. The *Greene* court noted: “[T]he fact is that the large firms listed on
4 the [National Law Journal] survey have acquired a reputation that allows them to command high
5 rates in the market. Many other firms, in particular smaller firms that may be providing equally
6 capable services, simply do not command anywhere near such rates” (*Greene v. City of New*
7 *York* (S.D.N.Y. October 25, 2013) 2013 U.S. Dist. LEXIS 154342, *14, fn. 44.) A copy of the
8 *Greene* case is attached as **Exhibit 25**.

9 98. The Ninth Circuit provides that “rates should be established by reference to the
10 fees that private attorneys of an ability and reputation comparable to that of prevailing counsel
11 charge their paying clients for legal work of similar complexity.” (*Davis v. City of San Francisco*
12 (9th Cir. 1992) 976 F. 2d 1536, 1545.)

13 99. In applying the Ninth Circuit standard for lodestar rates, the Central District of
14 California recognized that the size of a firm can be taken into consideration when determining
15 rates for lawyers of comparable ability and reputation. (*Common Cause v. Jones* (C.D. Cal. 2002)
16 235 F. Supp.2d 1076, 1081-1082.) In *Jones*, when evaluating whether plaintiff’s request for
17 current rates was reasonable to establish the lodestar, the Court compared firms of similar size
18 and reputation. (See also the Ruling on Submitted Matters: Motion to Tax Costs and Motion for
19 Attorneys’ Fees in *Streisand v. Adelman*, Los Angeles County Superior Court Case No. SC 077
20 257, filed May 10, 2004, p. 4.) A true and correct copy of this Ruling is attached hereto as
21 **Exhibit 26** and incorporated herein by this reference.

22 100. The “court should look to fees charged by attorneys COMPARABLY SITUATED
23 to those representing the movant. Thus, if the movant is represented by a small or medium-size
24 firm, the appropriate rates are those typically charged by such firms, whereas a movant may
25 obtain higher compensable rates if represented by a large urban firm” (*Algie v. RCA Global*
26 *Communications* (S.D.N.Y. 1994) 891 F. Supp. 875, 895 (emphasis added), citing *Chambless*
27 *v. Masters, Mates & Pilots Pension Plan* (2nd Cir. 1989) 885 F.2d 1053, 1058-59; *Jennette*
28 *v. City of New York* (S.D.N.Y. 1992) 800 F. Supp. 1165, 1169; *Williams v. City of New York*

1 (S.D.N.Y. 1990) 728 F. Supp. 1067, 1071; see also *Swisher v. U.S.* (D. Kan. 2003) 262 F.
2 Supp.2d 1203, 1214.)

3 101. I am aware of at least one other federal district court case (from the Second
4 Circuit) that held that in awarding fees in a fee-shifting case, the hourly rates awarded must
5 reflect the size of the law firm involved. This case, *Bick v. City of New York* (S.D.N.Y. April 21,
6 1998) (95 Civ. 8781), 1998 U.S. Dist. LEXIS 5543, 1998 WL 190283, is an unpublished opinion
7 by the U.S. District Court for the Southern District of New York. Notwithstanding being an
8 unpublished opinion, *Bick* has been cited in other decisions, both reported and unreported, in the
9 Second Circuit since 1998, e.g., *Shannon v. Fireman's Fund Insurance Co.* (S.D.N.Y. June 7,
10 2001) 2001 U.S. Dist. LEXIS 7452 [age discrimination case; district court focused on hourly rates
11 for seasoned civil rights litigators at small to midsize law firms in New York].

12 102. *Bick* follows the judicial reasoning in a reported decision by the Second Circuit
13 Court of Appeals, *Chambless v. Masters, Mates & Pilots Pension Plan* (2d. Cir. 1989) 885 F.2d
14 1053, 1058-59, cert. denied (1990) 496 U.S. 905, 110 L.Ed. 2d 268 [110 S.Ct. 2587] (district
15 court not required to assign the same hourly rate to every law firm in the same city, since several
16 market rates may prevail in a large and diverse legal community such as New York City; lodestar
17 rate can be calculated by specific reference to small-to-midsize firms).³

18
19 ³ Multiple other Courts have reached the same conclusion. “The Court sets Snitow’s and Epstein’s hourly
20 rate at \$275. This rate reflects both partners’ years of litigation experience (at least 25 years apiece). See, e.g.,
21 Expeditors Int’l of Wash., Inc. v. Rubie’s Costume Co., Inc., No. 03-CV-3333, 2007 U.S. Dist. LEXIS 7692, at *6
22 (E.D.N.Y. Feb. 2, 2007) (taking a partner’s 25 years of commercial litigation experience into account in setting an
23 hourly rate). This rate also reflects SKHM’s small size (10 to 12 attorneys). (See Epstein Decl. at 2; see also
24 Chambless, 885 F.2d at 1058-59 (affirming an award of attorneys’ fees where the district court set the hourly rates by
25 reference to small to medium-sized firms and suggesting that “smaller firms may be subject to their own prevailing
26 market rate”); Vilkhu v. City of New York, 06-CV-2095, 2009 U.S. Dist. LEXIS 73696, at *9 (E.D.N.Y. June 25,
27 2009) (“The size of the firm may also be considered as a factor in determining the hourly rate, ‘primarily due to
28 varying overhead costs.’” (quoting Cioffi v. N.Y. Cmty. Bank, 465 F. Supp. 2d 202, 219 (E.D.N.Y. 2006))).”
GuideOne Specialty Mutual Ins. v. Con. Adas Yereim, 1:04-cv-5300 (ENV) (JO), at *7-8 (E.D.N.Y. Sep. 29, 2009);
“The size of the firm may affect a court’s determination of a reasonable fee “since a smaller firm does not have the
same overhead costs as a larger firm and, thus, should have a lower rate.” Levy v. Powell, No. 00-CV-4499, 2005 WL
1719972, at *9 (E.D.N.Y. Jul. 22, 2005) (citing Murray ex. rel. Murray v. Mills, 354 F. Supp. 2d 231, 241 (E.D.N.Y.
2005)); Green v. City of New York, No. 05-CV-429, 2009 WL 3088419, at *3 (E.D.N.Y. Feb. 13, 2009); Cioffi
v. N.Y. Cmty. Bank, 465 F. Supp. 2d 202, 219 (E.D.N.Y. 2006) (finding that rates are lower for solo practitioners).”
Wong v. Yoo, 04-CV-4569 (JBW) (ALC), at *3 (E.D.N.Y. Oct. 19, 2010); “the size and caliber of a firm may also be
considered when determining a reasonable hourly rate, “primarily due to varying overhead costs.” Cioffi v. New
York Cmty. Bank, 465 F. Supp. 2d 202, 219 (E.D.N.Y. 2006) (citations omitted); Lukasjuk v. Sudeen, No. CV 02-
5143, 2007 U.S. Dist. LEXIS 95919, at *35 (E.D.N.Y. Nov. 27, 2007) (“[C]ourts typically recognize that the size and
(Continued...)”)

1 103. Large law firms spend a considerable amount of time and money marketing their
2 services to establish “brand identification,” so that potential clients will think of the law firm
3 when they seek legal services. For example, Orrick, Herrington & Sutcliffe, a large firm in San
4 Francisco, spends considerable resources to establish an identity as specialists in municipal
5 bonds. In the auditor’s experience, clients of larger firms are often drawn by this brand
6 identification and specialization and price is not the major factor. By contrast, small law firms and
7 solo practitioners do not devote large resources to marketing, and, therefore, their potential clients
8 are much more price sensitive, and their overhead more limited.

9 104. Both of Plaintiff’s law firms are small firms. (Brock Decl., ¶ 4 at p. 25:22-23;
10 Masry’s web site only lists Ms. Masry.) In my opinion and experience, and based upon the
11 analysis of billions of dollars of legal billing referenced above, small firms do not charge hourly
12 rates in the same range as larger law firms, because a large law firm’s client base consists mainly
13 of large corporate clients who are more willing and more able to pay the higher rates of firms who
14 specialize in large complex litigation matters and who charge for, among other items, higher
15 overhead costs. It is important to emphasize that I am not giving an opinion that an attorney’s
16 self-worth or quality of work depends on the size of the law firm. Rather I am simply stating a
17 basic fact of the market forces that small firm rates are less than larger firms’ rates, which should
18 be taken into consideration when determining reasonable rates.

19 105. The Ninth Circuit provides that “rates should be established by reference to the
20 fees that private attorneys of an ability and reputation comparable to that of prevailing counsel
21 charge their paying clients for legal work of similar complexity.” (*Davis v. City of San Francisco*
22 (9th Cir. 1992) 976 F. 2d 1536, 1545.) Plaintiff’s attorneys have not provided those rates.

23 _____
24 caliber of a firm will influence the determination of appropriate billing rates.” (citing cases).” *Olsen v. County of*
25 *Nassau*, CV 05-3623 (ETB), at *5 (E.D.N.Y. Jan. 26, 2010); “Although courts in this district have awarded attorneys
26 fees based on rates as high as those requested by the Plaintiff, such rates are usually reserved for attorneys in larger
27 law firms. Courts have recognized that the size of the firm representing a plaintiff seeking attorney’s fees is a factor
28 in determining a reasonable attorney’s fee, largely because of overhead costs.; *Algie v. RCA Global Communication,*
Inc., 891 F. Supp. 875, 895 (S.D.N.Y. 1994) (“If the movant is represented by a small or medium-size firm, the
appropriate rates are those typically charged by such firms, whereas a movant may obtain higher compensable rates if
represented by a large urban firm, since such firms typically charge more per hour to cover a higher overhead.”),
aff’d, 60 F.3d 956 (2d Cir. 1995).” *Tlacoapa v. Carregal*, 386 F. Supp. 2d 362, 369-70 (S.D.N.Y. 2005).

1 **E. Reference Rates.**

2 106. My research has not found any cases in which Plaintiff's attorneys have requested
3 or been awarded attorneys' fees other than the few cases that they themselves have referenced.
4 However, those cases along with certain other cases discussed here provide what I believe to be
5 valid reference rates to create a framework for reasonable rates.

6 107. *National Rifle Association v. City of Los Angeles* (C.D. Cal. Sep. 29, 2020), Case
7 No. 2:19-cv-03212-SVW-GJS. A true and correct copy of the order is attached as **Exhibit 27**.
8 This case was brought under 42 U.S.C. § 1983. Plaintiff successfully obtained a permanent
9 injunction against the defendant and the City repealed and ceased enforcement of an ordinance.
10 Attorney Carl Dawson, who had 31 years of experience, sought and was awarded fees at \$650 per
11 hour. Attorney Joshua R. Dale, who had 20 years of experience, sought and was awarded fees at
12 \$550 per hour.

13 108. *Smith v. County of Riverside* (C.D. Cal. June 17, 2019), Case No. EDCV 16-227
14 JGB (KKx). A true and correct copy of the order is attached as **Exhibit 28**. This case initially
15 alleged ten causes of action against the defendants. After various procedural issues and motions,
16 the case went to a jury on the issue of alleged excessive force by a police sergeant. The jury found
17 for plaintiff. On the motion for fees, attorney John Harris, with 44 years of experience, asked for
18 fees at \$900 per hour and was awarded fees at \$720 per hour. Attorney Paul Eisner, with 43 years
19 of experience, asked for fees at \$700 per hour and was awarded fees at \$560 per hour. The court
20 based its order on the Laffey Matrix, the Real Rate Report, and declarations from three attorneys.
21 The order was vacated on other grounds, but not on the basis of the rates awarded.

22 109. *Estate of Aguirre v. County of Riverside* (C.D. Cal. Mar. 29, 2024), Case No. CV
23 5:18-cv-00762-DMG-SP. A true and correct copy of the order is attached as **Exhibit 29**. This
24 case centered around an officer-involved death. Following a five-day jury trial, the jury found for
25 plaintiffs and awarded \$10 million in damages. Attorney Hang D. Le, a 2013 law school graduate,
26 requested fees at \$700 per hour as an 11-year attorney. Ms. Le was the day-to-day managing
27 attorney in this case and second chaired the trial (alongside lead attorney Dale Galipo). Following
28 analysis, the court awarded her fees at \$650 per hour.

1 110. *Matkovich v. Costco Wholesale Corporation* (C.D. Cal. Aug. 24, 2017), Case No.
2 LA CV 15-2057 JCG. As Mr. Brock submitted, he was awarded fees in this case at \$600 per hour
3 in 2017. At a demonstrable four percent per year increase, that would result in a 2026 fee of \$854
4 per hour. Mr. Pletcher’s fee award of \$350 per hour would likewise result in \$498 per hour now.

5 111. *Elizabeth v. Palumbo*, Riverside County Superior Court, 2024(?). Ms. Kerner
6 provided scant information about this case. However, assuming for the sake of argument that she
7 was awarded fees at \$500 per hour two years ago, at a four percent per year increase, her rate
8 would be \$541 now.

9 **F. Reasonable Local Rates.**

10 112. It is my opinion that Plaintiff’s attorneys have not *demonstrated* the rates being
11 sought in this matter are reasonable and appropriate market rates for them for the practice area by
12 small-sized law firms in this community.

13 113. They have not provided any evidence that they have been awarded fees at these
14 rates nor have they provided rates awarded to comparable attorneys.

15 114. Based upon the reference rates I cite it is my opinion that the requested rates are
16 unsupported and unreasonable.

17 115. Plaintiff’s attorneys are asking for fees at \$1,000 per hour for three of those
18 attorneys: Mr. Brock, Mr. Clayton, and Ms. Masry. Based upon Mr. Brock’s award in *Matkovich*,
19 his 2026 rate would be \$854 per hour. This rate would be in line with the rates awarded in
20 *National Rifle Association* and *Smith v. Riverside*. It is my opinion that he should be awarded no
21 more than \$854 per hour. As Mr. Clayton tried the case along with Mr. Brock, it is my opinion
22 that he also should be awarded fees at no more than \$854 per hour.

23 116. Although Plaintiff’s attorneys seek \$1,000 per hour for Ms. Masry, I do not
24 believe that her work in this case warrants an equal hourly rate as Mr. Brock and Mr. Clayton for
25 at least two reasons. First, she billed only 44.25 hours out of the total 899.95 hours claimed by
26 plaintiff’s counsel. This equals five percent of the total hours billed. ($44.25/899.95 = 0.049$)
27 Second, my review of her 50 billing entries found the majority of her work was self-described as
28 reviewing the work of other attorneys and discussing work with other attorneys. I do not mean to

1 say that she did not at some point make meaningful contributions to the case. However, it is my
2 opinion that that is not sufficiently evidenced by her own billing records.

3 117. Based upon her limited work in this case, but with some deference to her 29 years
4 of law practice, it is my opinion that she should be awarded fees at no more than \$800 per hour.

5 118. Ms. Kerner's rate should be based upon her self-reported award in *Elizabeth*
6 *v. Palumbo*, adjusted for two years. As discussed above, that rate should be \$541.

7 119. Mr. Pletcher's fee award in *Matkovich* would set his 2026 rate at \$498 per hour.

8 120. I next address issues I identified in the billing records.

9 **II. DUPLICATIVE WORK.**

10 121. Although there were only five attorneys billing to this case, four of whom worked
11 at the same law firm, I found a not insignificant amount of billing for duplicative work.

12 122. For example, two attorneys billed to review the court's notice of case assignment:

13

2024-07-31	Brock, Aaron	Reviewed Fed Court's Notice of Assignment & Crt Directed ADR & Consent to Maj	0.10
2024-07-31	Masry, Louanne	Reviewed Federal Court Ntc of Assignment and Related Docs	0.10

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17 123. Similarly, two attorneys billed to review a notice taking a motion off calendar,
18 setting a scheduling conference, an Order to Show Cause, and attending a conference:

19

2024-10-03	Brock, Aaron	Reviewed Court's Order re Taking Motion to Dismiss Off calendar	0.10
2024-10-03	Pletcher, Andrew	Receive Notice from Court regarding Motion to Dismiss hearing	0.10
2024-11-18	Brock, Aaron	Reviewed Court's Order Setting Scheduling Conference	0.10
2024-11-18	Masry, Louanne	Reviewed Court's Order Setting Scheduling Conference	0.10
2024-11-27	Brock, Aaron	Reviewed Court's OSC	0.10
2024-11-27	Pletcher, Andrew	Read Court's OSC order regarding Aguilara	0.10

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2024-12-06	Pletcher, Andrew	Attend the Rule 26(f) conference with CK	0.50
2024-12-12	Kerner, Christina	Conduct Rule 26f Conf M&C with OC and Pletcher & Reviewed OC's Confirming email	1.00

124. Although it is reasonable for all attorneys to be aware of what is happening in a case, it is not reasonable for two or more timekeepers to bill to review such routine communications. Such a billing practice should not be used with a paying client (the duplicative work should be removed in an exercise of billing judgment before the invoice is sent out) nor should it be foisted upon an opposing party via fee shifting.

125. I have allowed Mr. Clayton and Mr. Brock to bill to attend trial but recommend adjusting Ms. Kerner’s time at trial as duplicative.

126. A table setting forth all duplicative entries I identified is attached as **Exhibit 30**. A separate Excel file containing this table is also being filed with the court and served on opposing counsel. The shaded rows are the billing entries that I am allowing. I recommend that the unshaded rows be adjusted as duplicative.

127. My recommended fee adjustment based on this duplication is set forth in the table contained in the section titled “SUMMARY” at the end of this declaration.

III. BILLING FOR EXCESSIVE INTRA-OFFICE CONFERENCING.

128. Although attorneys and staff within a firm need to coordinate work and discuss strategy, when done to excess, such intra-office conferencing becomes troubling. Especially where law firms claim expertise and experience in a given area of law, the need for such conferencing should be minimal. Here, as discussed above, lead Plaintiff’s attorneys all claim a great amount of experience with the type of claim involved in this case as well as experience with trials.

1 129. I identified the following amounts of intra-office conferencing:

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Timekeeper	Lodestar Hours (LS)	Intra-Office Conferencing Hours (IOC)	IOC as a % of LS	4.00% of LS	Excess IOC Hrs
Brock, Aaron	122.80	0.50	0.4%	4.91	0.00
Clayton, Robert	252.00	23.30	9.2%	10.08	13.22
Kerner, Christina	298.90	6.90	2.3%	11.96	0.00
Masry, Louanne	44.25	4.25	9.6%	1.77	2.48
Pletcher, Andrew	182.00	26.90	14.8%	7.28	19.62

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9 130. To quantify the extent of intra-office conferencing in Plaintiffs' attorneys' billing records, I conducted word searches for words pertaining to conferencing such as "meet with," "discuss," "co-counsel," "call," "correspond," or "team." I also searched in the task descriptions for the names or initials of the timekeepers who billed to this matter for entries that would indicate communications with those personnel. All intra-office conferencing entries I identified are included in the table attached as **Exhibit 31**. A separate Excel file containing this table is also being filed with the court and served on opposing counsel.

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16 131. Conferencing is not directly related to any particular work product and consists of exactly what it says – attorneys and staff discussing the case amongst themselves, giving or receiving assignments, and other such communications. In my experience, excessive conferencing is typically subject to disallowance by courts. Some strategic conferencing among attorneys does have value, but not when done to excess.

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21 132. In *Munoz v. California Business Bureau, Inc.* (E.D. Cal., July 14, 2017) Case No. 1:15-cv-1345-BAM, 2017 U.S. Dist. LEXIS 212842, the court examined the issue of intra-office conferencing in the context of evaluating a fee request. A true and correct copy of this opinion is attached as **Exhibit 32**. The court reasoned as follows:

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25 With regard to the time and labor required, the Court has reviewed the billing records submitted by Plaintiff's counsel and finds that, with two exceptions, the number of hours expended to be reasonable. First, a review of counsels' billing records reveals that counsel billed over 10 attorney hours for interoffice conversations between all three attorneys to discuss case status or strategy. While it is reasonable to spend some time coordinating legal resources, it is not reasonable to double or triple-bill a client for internal meetings, many of which appear to be for partner, Mr. Hyde, to provide instructions to his junior

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28

1 associates, Mr. Connolly and Ms. Dorman. *See Gauchat-Hargis v. Forest River, Inc.*, No. 2:11-cv-02737-KJM-EFB, 2013 U.S. Dist. LEXIS 128508, 2013 WL 4828594, (E.D. Ca 1. 2 Sep. 6, 2013) (finding it unreasonable for partners and associates to collectively “triple- 3 bill” a client for attending internal meetings).

4 For example, on June 16, 2016, Mr. Connolly and Ms. Dorman each billed .4 hours to 5 “speak with Robert Hyde” about “opposing counsel’s summary judgment letter.” (Doc. 6 29-8, Exh. A at 4). Mr. Hyde billed a slightly longer .6 hours for that same meeting 7 ostensibly in preparation to provide Mr. Connolly and Ms. Dorman further instruction at 8 the meeting. Given the triple-billing here for these kinds of internal communications, the 9 Court agrees with Defendant that such charges are excessive. *See Chalmers*, 796 F.2d at 10 1211 (The court may reduce those hours where a case is overstaffed and hours are 11 duplicated and where the hours expended are deemed to be excessive). Thus, while the 12 billing of 3.3 hours to conduct strategy meetings by Mr. Hyde was reasonable, the 13 additional duplicative billing to attend those meetings was not. Accordingly, the Court 14 will deduct the 3.3 hours each spent by Ms. Dorman and Mr. Connolly to attend 15 meetings with co-counsel for a total reduction of 6.6 hours.

16 (*12-13.)

17 133. The court thus allowed the time for one timekeeper to be involved in a meeting, 18 but disallowed the time billed by other timekeepers for that same meeting. The same analysis can 19 apply in cases in which one timekeeper bills to draft and send an email or memo and another 20 timekeeper bills to receive and review that communication.

21 134. In *Scott v. Jayco, Inc.* (E.D. Cal. Dec. 18, 2021) 1:19-cv-0315 JLT, at *7-8, the 22 court said:

23 As this Court previously observed, “many courts ... reduced fee awards for time spent in 24 ‘interoffice conferences’ or other internal communications.” *Gauchat-Hargis v. Forest 25 River, Inc.*, 2013 WL 4828594 at *3 (E.D. Cal. Sept. 9, 2013) citing, *e.g.*, *Mogck v. Unum 26 Life Ins. Co. of Am.*, 289 F.Supp.2d 1181, 1194 (S.D. Cal. 2003); *see also United States v. 27 One 2008 Toyota Rav 4 Sports Util. Vehicle*, 2012 WL 5272281 at *9 (C.D. Cal. Oct. 18, 28 2012) (“[w]hen attorneys hold a telephone or personal conference, good ‘billing judgment’ 29 mandates that only one attorney should bill that conference to the client, not both 30 attorneys” [citation omitted]); *Coles v. City of Oakland*, 2007 WL 39304, at *10 (N.D. 31 Cal. Jan. 4, 2007) (observing that billing for communications between attorneys may be a 32 sign of overstaffing, warranting a reduction in hours billed).

33 A true and correct copy of this order is attached as **Exhibit 33**.

34 135. In *Lemmons v. Ace Hardware Corp.* (N.D. Cal. Feb. 1, 2015) Case No. 12-cv- 35 03936-JST, the court reduced fees due to excessive and vague conferencing.

36 The Court knows that co-counsel sometimes need to strategize. But lawyers who are 37 experts in the field of disability litigation, working at a small firm that exclusively handles 38 that kind of work, should not need to bill 259 separate entries for strategizing. “The Ninth 39 Circuit has approved of reductions in fees for unnecessary and duplicative intra-office 40 conferences,” and other courts in this District have “previously been critical of excessive 41 conferencing by Rein Law.” *Hernandez*, 2014 WL 1724356 at *10. Compounding these

1 concerns is that some entries lack any specificity, such as “Meet w/ co-co re: pending
2 issues” or “Strategize w/ staff re current case issues,” which make such review more
difficult and cause the Court some concern. ECF No. 130-8 at 3, 5.

3 Because the Court finds that Defendants’ criticisms of the excessive nature of Plaintiff’s
4 counsel’s billing for internal meetings are valid, it will exercise its discretion to reduce the
\$39,048.00 that Defendants characterize as having been billed for time spent on internal
5 meetings by 50%, awarding \$19,524.00 for these entries.

6 (*4.) A true and correct copy of this opinion is attached as **Exhibit 34**.

7 136. Plaintiff’s attorneys state their credentials, experience, and expertise. However,
8 given their credentials, experience, and expertise in this area of law, they have not explained the
9 need for so much conferencing.

10 137. Over the past 30+ years, I have audited major national and international law firms
11 and in general I have found that the amount of intra-office conferencing in well-managed
12 litigation averaged between two to four percent of the total fees so the conferencing here by some
13 of the timekeepers is not within this reasonable amount.

14 138. Based upon the above analysis, it is my opinion that the intra-office conferencing
15 hours that are greater than 4.0 percent of the total hours for each timekeeper are excessive.

16 139. My recommended fee adjustment based on this excessive intra-office conferencing
17 is set forth in the table contained in the section titled “SUMMARY” at the end of this declaration.

18 **IV. BILLING FOR CLERICAL AND ADMINISTRATIVE TASKS.**

19 140. Clerical or firm administrative work is generally not recoverable because it is
20 considered overhead. Instead, it should be taken into account when a law firm sets its attorneys’
21 hourly rates.

22 141. Clerical work is considered overhead, and as such, it is neither billable nor
23 recoverable. “[C]lerical or ministerial costs are part of an attorney’s overhead and are reflected in
24 the charged hourly rate.” (*Jeremiah B. v. Dep’t of Educ.* (D.Haw. Jan 29, 2010) Civil No. 09-
25 00262 DAE-LEK, 2010 WL 34654, at *5, citing *Sheffer v. Experian Info. Solutions, Inc.* (E.D.
26 Pa. 2003) 290 F. Supp. 2d 538, 549.)

27 142. As the Court in *Pelayo Playa, et al. v. Platinum Limousine Services, Inc., et al.*
28 (D.Haw. 2016) 2016 WL 5402185 (Civil No. 15-00023, September 27, 2016) stated:

1 Clerical costs, on the other hand, are part of an attorney's overhead and are subsumed in
2 the attorney's charged hourly rate. *Jeremiah B. v. Dep't of Educ.*, 2010 WL 346454, at *5
3 (D. Haw. Jan. 29, 2010) (citation omitted). *See also Frankl v. HGH Corp.*, 2012 WL
4 1755423, at *8 (D. Haw. Apr. 23, 2012), F&R adopted by 2012 WL 1753644 (D. Haw.
5 May 14, 2012) (“[I]t is not customary to bill for purely clerical or secretarial work
6 separately from attorney's services. As previously stated, in this district, such tasks are
7 subsumed in an attorney's overhead costs.”)

8 *Pelayo* at *7.

9 143. Clerical work is also not recoverable simply because an attorney or paralegal
10 actually does the work. “[F]ee requests for ministerial tasks performed by counsel such as ‘file
11 organization’ should not be allowed as compensable time.” (*In re Taylor* (Bankr. D. Colo. 1989)
12 100 B.R. 42, 44) And, “[t]ruly ministerial services such as xeroxing and filing documents with the
13 Court should not be compensated at the same rate as those services which are legal. Even if an
14 attorney or paralegal performs the ministerial services, it does not increase the value of that
15 service.” (*Id.*)

16 144. An entry-by-entry search for clerical-related words was conducted to identify time
17 entries that refer to clerical or administrative tasks. Many of the entries related to corresponding
18 with a court reporter or the court clerk.

19 145. A table setting forth all billing entries containing clerical or administrative tasks is
20 attached as **Exhibit 35**. A separate Excel file containing this table is also being filed with the
21 court and served on opposing counsel. All such time should be disallowed.

22 146. My recommended fee adjustment based on billing for clerical or administrative
23 tasks is set forth in the table contained in the section titled “SUMMARY” at the end of this
24 declaration.

25 **V. VAGUE BILLING FOR TRIAL PREPARATION.**

26 147. As noted above, I have allowed Mr. Clayton and Mr. Brock to both bill to attend
27 trial. However, I found that Mr. Brock repeatedly used a fairly generic description to describe his
28 trial preparation and consistently billed. 5.0 hours for that task. Those entries are:

1	2025-11-24	Brock, Aaron	Trial Prep, Including Reading All Depos/Pleadings Motions/Discovery/Intereviews [sic] of Plaintiff and Officerss	5.00
2				
3				
4	2025-11-25	Brock, Aaron	Trial Prep, Including Reading All Depos/Pleadings Motions/Discovery/Intereviews [sic] of Plaintiff and Officerss	5.00
5				
6				
7	2025-11-26	Brock, Aaron	Trial Prep, Including Reading All Depos/Pleadings Motions/Discovery/Intereviews [sic] of Plaintiff and Officerss	5.00
8				
9				
10	2025-11-28	Brock, Aaron	Prepared for Trial, Including Reviewing/Drafting Opening Statement, Directs & Cross	5.00
11				
12	2025-11-29	Brock, Aaron	Prepared for Trial, Including Reviewing/Drafting Opening Statement, Directs & Cross	5.00
13				
14	2025-11-30	Brock, Aaron	Prepared for Trial, Including Reviewing/Drafting Opening Statement, Directs & Cross	5.00
15				
16	2025-12-03	Brock, Aaron	Prepared for Trial, Including Reviewing/Drafting Opening Statement, Directs & Cross	5.00
17				
18	2025-12-04	Brock, Aaron	Prepared for Trial, Including Reviewing/Drafting Opening Statement, Directs & Cross	5.00
19				
20				

21 148. The auditor is not questioning whether or not the work listed in the table above
22 was done. However, vague entries have in common that they omit a basic element of information
23 necessary to communicate what was done. As the Supreme Court notes in *Hensley v. Eckerhart*
24 (1983) 461 U.S. 424 [76 L.Ed. 2d 40, 103 S. Ct. 1933], “plaintiff’s counsel, of course, is not
25 required to record in great detail how each minute of his time was expended. But at least counsel
26 should identify the general subject matter of his time expenditures.” (*Hensley*, supra, 461 U.S. at
27 p. 437 n. 12; see also *Davis v City and County of San Francisco* (9th Cir. 1992) 976 F.2d at
28 1542.)

1 149. In general, the billing records ought to provide: "...sufficient detail and probative
2 value to enable the court to determine with a high degree of certainty that such hours were
3 actually and reasonably expended." *United Slate, Tile & Composition v. G&M Roofing* (6th Cir.
4 1984) 732 F.2d 495, 502 n.2.

5 150. Mr. Brock's generic trial preparation description includes drafting an opening
6 statement every day of trial, and working on directs and cross for every day of trial. Mr. Brock
7 was capable of including more descriptive information in his billing entries related to trial
8 preparation but chose not to do so.

9 151. The California State Bar issued Arbitration Advisory 2016-02 on March 25, 2016.
10 It is titled "Analysis of Potential Bill Padding and Other Billing Issues."

11 Furthermore, generalized time entries such as "research issues", "review file", "attention
12 to file", "discovery", "prepare for trial", "trial prep", and other similar general statements
13 are not specific enough to let the client know what was done. If a lawyer uses such
14 nonspecific task descriptions, it may be appropriate for the arbitrator to place on the
15 lawyer the burden of clarifying what was actually done to assess whether the generalized
16 time entries are actually compensable and appropriate.

17 Arbitration Advisory 2016-02, ¶ 5. See Exhibit 12.

18 152. It is the obligation of the moving party to "submit evidence supporting the hours
19 worked and rates claimed. Where the documentation of hours is inadequate, the district court may
20 reduce the award accordingly." (*Hensley, supra*, 461 U.S. at p. 433). Billing records must at least
21 identify the general subject matter of time expenditures so as to enable the reviewing court to
22 determine whether the time spent is related to a prevailing claim. *Id.* 461 U.S. at 437, fn 12. If
23 plaintiff's counsel fails to do so, the Court may be justified in "throwing up its hands and refusing
24 to award any fees whatsoever." (*Norris v. Sysco Corp.* (9th Cir. 1999) 191 F.3d 1043, 1052.) In
25 the motion at hand, premised upon billing records that include vague entries, it is the auditor's
26 opinion that there are sufficient grounds to disallow an appropriate portion of the vague fees
27 claimed on account of inadequate documentation of hours billed.

28 153. In *In re Samuel R. Pierce, Jr.* (D.C. Cir. 1999) 190 F.3d 586, 593-594, the D.C.
Circuit confirmed that its general practice was to reduce vaguely entered hours of plaintiffs'
attorneys by 10 percent. Similarly, the Eighth Circuit in *H.J. Inc. v. Flygt Corp.* (8th Cir. 1991)

1 925 F.2d 257, 260 upheld a district court’s reduction of hours billed by the prevailing petitioner’s
2 attorneys by 20 percent for vague billing entries. Finally, in *Gratz v. Bollinger* (E.D. Mich. 2005)
3 353 F.Supp.2d 929, 939, District Judge Duggan reduced requested fees 10 percent due to block
4 billing and vague entries.

5 154. I recommend that 20 percent of Mr. Brock’s vague billing for trial preparation be
6 adjusted. My recommended fee adjustment based on billing for this category is set forth in the
7 table contained in the section titled “SUMMARY” at the end of this declaration.

8 **VI. BILLING FOR LONG DAYS.**

9 155. As noted above, Attorney Kerner submitted two billing entries for September 6,
10 2025:

11

12 2025-09-06	Kerner, Christina	Reviewed and gathered evidence for Plaintiff's Opposition to Defendant's MSJ	8.00
13 2025-09-06	Kerner, Christina	Drafted Plaintiff's Separate Statement for Plaintiff's Opposition to Defendant's MSJ	16.50

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15 156. She submitted four billing entries for October 22, 2025:

16

17 2025-10-22	Kerner, Christina	Listened to Hours of Transcript [sic] Interviews	12.00
18 2025-10-22	Kerner, Christina	Review and Draft Joint Statement re ADR	1.50
19 2025-10-22	Kerner, Christina	Drafted Plaintiff's Memo of Facts & Contentions	8.00
20 2025-10-22	Kerner, Christina	Internal chain email re OSC declaration	0.10

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23 157. Billing in long days is neither standard, nor an acceptable billing practice. It is
24 associated with fatigue, loss of productivity, inefficient or unnecessary effort, and reliance on
25 rounding and estimates rather than recording actual billed time. Based on my experience as an
26 attorney, as a client who supervised attorneys, and as a legal fee expert it has been my experience
27 that in order to bill 10 hours a day in the office an attorney must spend at least an additional two
28 or three hours in the office in order to account for bathroom breaks, personal business, etc. In the

1 auditor's experience, the longer the billed day, the greater the inefficiencies are due to fatigue. In
2 forming these opinions, in addition to my personal experience I relied on the cases *Strachan*
3 *v. Pandaw Cruises India Pvt, Ltd* (D. Colo 2013) No. 10-cv- 02593 (affirmed on appeal April 14,
4 2014, No. 13-1482); *Chrapliwy v. Uniroyal*, 583 F. Supp. 40, 49-50 (1983); *Ramos v. Lamm*, 713
5 F 2d 546, 553.

6 158. I recommend that 50 percent of Ms. Kerner's time for impossibly long days be
7 adjusted. My recommended fee adjustment based on billing for this category is set forth in the
8 table contained in the section titled "SUMMARY" at the end of this declaration.

9 **VII. THE REQUESTED 1.25 MULTIPLIER IS NOT JUSTIFIED.**

10 159. Plaintiffs' Attorneys argue that a 1.25 multiplier is warranted in this case. (Notice
11 of Motion p. 2:7; MPA p. 18:7ff.) The expressed rationale for the requested multiplier are the
12 contingent risk, difficult issues, and the requirement of significant skill. (MPA, p. 19:17-20.)

13 160. Virtually all single-plaintiff tort cases are brought on this type of contingent fee
14 agreement whereby counsel recovers fees only if plaintiff prevails. This case is no different.

15 161. Counsel are expected to adjust for the risk in the hourly rates they seek.

16 162. If the Court were to accept the claim that a multiplier is *de facto* automatically
17 warranted in each and every contingent case due to "the risk," it would be creating new law.
18 Courts have never set forth this proposition and the fact that the California legislature did not
19 make a multiplier a statutory requirement forcefully argues against this being the primary basis
20 for any multiplier, much less a 1.25 multiplier. If counsel believes that their time is worth the
21 enhanced rates, then they should set their billing rates at those higher levels.

22 163. In *Perdue v. Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 550, the Supreme Court
23 held, in the context of addressing a "reasonable fee" under a federal fee-shifting statute, that "the
24 lodestar method yields a fee that is presumptively sufficient to achieve this objective." (*Id.*, at
25 p. 552.) Moreover, with respect to whether a multiplier could be utilized under the lodestar
26 method, the Supreme Court emphasized that a multiplier is warranted only in "rare and
27 exceptional" circumstances, and provided the following explanation:
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1 [W]e have noted that the lodestar figure includes most, if not all, of the relevant factors
2 constituting a reasonable attorney’s fee, and have held that an enhancement may not be
3 awarded based on a factor that is subsumed in the lodestar calculation. We have thus
4 held that the novelty and complexity of a case generally may not be used as a ground
5 for an enhancement because these factors presumably [are] fully reflected in the
6 number of billable hours recorded by counsel. We have also held that the quality of an
7 attorney’s performance generally should not be used to adjust the lodestar because
8 considerations concerning the quality of a prevailing party’s counsel’s representation
9 normally are reflected in the reasonable hourly rate.

10 (*Id.* at p. 553 (quotations and citations omitted).)

11 164. The Court then, after explicitly rejecting “any contention that a fee determined by
12 the lodestar method may not be enhanced in any situation,” held that superior attorney
13 performance could only serve as a basis for an enhancement in *narrow* circumstances:

14 In this case, we are asked to decide either the quality of an attorney’s performance or
15 the results obtained are factors that may properly provide a basis for an enhancement.
16 We treat these two factors as one. When a plaintiff’s attorney achieves results that are
17 more favorable than would have been predicted based on the governing law and the
18 available evidence, the outcome may be attributable to superior performance and
19 commitment of resources by plaintiff’s counsel. Or the outcome may result from
20 inferior performance by defense counsel, unanticipated defense concessions,
21 unexpectedly favorable rulings by the court, an unexpectedly sympathetic jury, or
22 simple luck. Since none of these latter causes can justify an enhanced award, superior
23 results are relevant only to the extent it can be shown that they are the result of superior
24 attorney performance. Thus, we need only consider whether superior attorney
25 performance can justify an enhancement. And in light of the principles derived from
26 our prior cases, we inquire whether there are circumstances in which superior attorney
27 performance is not adequately taken into account in the lodestar calculation. We
28 conclude that there are a few such circumstances but these circumstances are indeed
“rare” and “exceptional” and require specific evidence that the lodestar fee would not
have been “adequate to attract competent counsel.”

19 (*Id.* at p. 554; see also *Scudder v. Department of Transportation* (2nd App. Dist., Case
20 No. B293859, 7/14/2020) *5, *7 [unpublished] (“The trial court, however, declined to apply a
21 multiplier. First, it found the case concerned workplace harassment and discrimination based on
22 race for one plaintiff, which was not so unusual or complex that it required exceptional skill. The
23 court further concluded that plaintiff’s attorneys did not display such exceptional skill that
24 exceeded the quality of an attorney with comparable skill and experience. Plaintiff does not
25 dispute these findings.”)

26 165. “To the extent plaintiff contends the trial court was required, as a matter of law, to
27 apply a multiplier, we disagree.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138 [“the trial
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1 court is not required to include a fee enhancement to the basic lodestar figure for contingent risk,
2 exceptional skill, or other factors, although it retains discretion to do so in the appropriate case;
3 moreover, the party seeking a fee enhancement bears the burden of proof”].” A true and correct
4 copy of this opinion is attached as **Exhibit 36**.

5 166. On April 6, 2026, the United States Court of Appeals for the Ninth Circuit issued
6 its opinion in *Thrower v. Academy Mortgage Corporation*, No. 24-6247 (9th Cir. 2026). A true
7 and correct copy of this opinion is attached as **Exhibit 37**. In this opinion, the court held that the
8 lower court abused its discretion in awarding an enhancement above the lodestar calculation.

9 167. The lower court awarded rates based upon a previous request by the same
10 attorneys, adding 20% to account for inflation in legal market rates, and then awarded a 1.75
11 multiplier. (Ex. 36, *7.) The defendant appealed the award of the multiplier.

12 168. The appellate court quoted previous opinions related to multipliers. It said:

13 Any modification [of the lodestar figure] must be “based on factors not subsumed in the
14 lodestar figure.” *Kelly*, 822 F.3d at 1099.

15 Given the comprehensive nature of the lodestar calculation, any enhancements are “rare
16 and exceptional.” *Perdue*, 559 U.S. at 554 (simplified); *see also id.* at 561 (Thomas, J.,
17 concurring) (“[T]he lodestar calculation will in virtually every case already reflect all
18 indicia of attorney performance relevant to a fee award.” (simplified)). A multiplier may
19 be awarded only upon “specific evidence” that the lodestar fee is “unreasonably low or
20 unreasonably high.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th
21 Cir. 2000) (simplified). “Any reliance on factors . . . subsumed in the lodestar
22 determination will be considered an abuse of the trial court’s discretion.” *Parsons v. Ryan*,
23 949 F.3d 443, 467 (9th Cir. 2020) (simplified).

24 (Ex. 36, *8-9.)

25 169. The court in *Davis v. City and County of San Francisco* (9th Cir. 1992) 976 F.2d
26 1536, 1549-50 found that the risk of no-fees is not relevant.

27 170. In *Zargarian v. BMW of N. Am., LLC* (C.D. Cal. 2020) 442 F. Supp. 3d 1216,
28 1230, the Court found a multiplier was not needed simply because the case was taken on
contingency:

The Court declines Plaintiff’s request to apply an upward multiplier of 1.5 in this case.
The amount of time and skill required to properly resolve this litigation, counsel’s
success in resolving the matter, and the case’s novelty or complexity are reflected in
the number of billable hours recorded and the reasonable hourly rate. Further, Plaintiff
does not argue that counsel was prevented from taking other work because of the
representation here. The Court acknowledges the contingent nature of this

1 case; nonetheless, “[a]n attorney operating on a contingency-fee basis pools the risks
2 presented by his various cases: cases that turn out to be successful pay for the time he
3 gambled on those that did not. To award a contingency enhancement under a fee-
4 shifting statute would in effect pay for the attorney’s time ... in cases where his client
5 does not prevail.” *City of Burlington v. Dague*, 505 U.S. 557, 565, 112 S.Ct. 2638, 120
6 L.Ed.2d 449 (1992). While Plaintiff claims that Defendant’s litigation tactics made the
7 risks associated with the contingent nature of this litigation extremely high, the
8 Court finds that this case does not warrant the requested enhancement. The lodestar
9 reflects the reasonable amount of attorneys’ fees Plaintiff should recover, and the
10 Court DENIES the requested 1.5 multiplier enhancement.

11 171. This “risk” factor does not support Plaintiff’s attorneys’ request for a multiplier.

12 172. The “difficulty” factor should also already be subsumed in the hourly rates
13 requested. As Plaintiff’s attorneys note in the MPA:

14 “To determine the reasonable hourly rate ... [T]he court may rely on its own knowledge and
15 familiarity with the legal market, as well as the experience, *skill*, and reputation of the
16 attorney requesting fees, *the difficulty or complexity of the litigation to which that skill*
17 *was applied*”

18 (MPA, pp. 10:26-11:4, internal citations omitted, emphases added.)

19 173. Furthermore, based upon my reading of the case documents and discussions with
20 defense counsel, this was not a difficult case. There was no significant dispute related to the
21 contacts between plaintiff and the officer and there were no unusual challenges related to
22 vicarious liability.

23 174. As for the skill factor displayed by counsel, the court is best placed to decide
24 whether that skill warrants the imposition of a multiplier.

25 175. The lodestar is presumptively reasonable and, in most cases, does not need to be
26 enhanced.

27 “The lodestar amount is presumptively the reasonable fee amount, and thus a multiplier
28 may be used to adjust the lodestar amount upward or downward only in ‘rare’ or
‘exceptional’ cases, supported by both specific evidence on the record and detailed
findings ... that the lodestar amount is unreasonably low or unreasonably high.” *Van*
Gerwen v. Guar. Mut. Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000) (internal citation
omitted). “[T]he trial court is not *required* to include a fee enhancement to the basic
lodestar figure for contingent risk, exceptional skill, or other factors, although it retains
discretion to do so in the appropriate case; moreover, the party seeking a fee
enhancement bears the burden of proof.” *Ketchum*, 24 Cal.4th at 1138, 104 Cal.Rptr.2d
377, 17 P.3d 735 (emphasis in original).

(*Newton v. Equilon Enters.* (N.D. Cal. 2019) 411 F. Supp. 3d 856, 883.)

1 176. If the 1.25 multiplier were to be awarded on top of the requested hourly rates, the
2 fees awarded would be based on the following rates:

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Timekeeper	Requested Rate	x 1.25
Aaron Brock	\$1,000	\$1,250.00
Robert Clayton	\$1,000	\$1,250.00
Christina Kerner	\$650	\$812.50
Louanne Masry	\$1,000	\$1,250.00
Andrew Pletcher	\$750	\$937.50

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9 177. To award these enhanced rates for the entirety of the case would be excessive in
10 my opinion.

11 178. The factors raised by Plaintiff's attorneys do not support the request for the 1.25
12 multiplier.

13 **VIII. ALLOCATION**

14 179. I understand that all direct claims against the City of San Bernardino were
15 dismissed, leaving it only vicariously liable for the former officer's actions. As such, there may
16 be an argument made as to the allocation of attorneys' fees between the various causes of action
17 but I was not retained to express an opinion on that issue.

1 **SUMMARY OF FINDINGS**

2 180. The following tables summarize my findings by timekeeper:

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BROCK, AARON	
Requested Hours	122.80
Billing for Duplicative Work	(1.75)
Billing for Clerical and Administrative Work	(1.00)
Vague Billing for Trial Preparation	(8.00)
Net Hours	112.05
Recommended Rate	\$ 854.00
Net Fees	\$ 95,690.70

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CLAYTON, ROBERT	
Requested Hours	252.00
Billing for Duplicative Work	(0.70)
Billing for Excessive Intra-Office Conferencing	(13.22)
Billing for Clerical and Administrative Work	(3.60)
Net Hours	234.48
Recommended Rate	\$ 854.00
Net Fees	\$ 200,245.92

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KERNER, CHRISTINA	
Requested Hours	298.90
Billing for Duplicative Work	(42.50)
Billing for Clerical and Administrative Work	(0.85)
Billing for Long Days	(23.05)
Net Hours	232.50
Recommended Rate	\$ 541.00

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Net Fees	\$ 125,782.50
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MASRY, LOUANNE	
Requested Hours	44.25
Billing for Duplicative Work	(3.05)
Billing for Excessive Intra-Office Conferencing	(2.48)
Net Hours	38.72
Recommended Rate	\$ 800.00
Net Fees	\$ 30,976.00

PLETCHER, ANDREW	
Requested Hours	182.00
Billing for Duplicative Work	(2.90)
Billing for Excessive Intra-Office Conferencing	(19.62)
Billing for Clerical and Administrative Work	(1.30)
Net Hours	158.18
Recommended Rate	\$ 498.00
Net Fees	\$ 78,773.64

The above findings and adjustments would result in the following fee award:

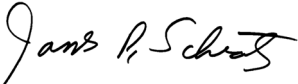
Brock, Aaron	\$ 95,690.70
Clayton, Robert	\$ 200,245.92
Kerner, Christina	\$ 125,782.50
Masry, Louanne	\$ 30,976.00
Pletcher, Andrew	\$ 78,773.64
TOTAL FEES	\$ 531,468.76

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In my opinion, the total fees that should be awarded to Plaintiff's Attorneys is \$531,468.76 with no multiplier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of June 2026 at Sonoma, California.



James P. Schratz